IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

WP(C).No. 23904 of 2007(U)

AGAINST THE ORDER IN EP 82/05 IN
ARBC.993/2003 of PRL.M.C.KOZHIKODE-I

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PETITIONERS:
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1. RAJU C.V.,
CHEERAN HOUSE, AMULYA STREET, ERNAKULAM, KOCHI-18
NOW RESIDING AT CHEERAN HOUSE, C/O.K.P.JACOB
PARAVATH LANE, BOAT JETTY ROAD, VADUTHALA PO,
KOCHI-23.

2. SHINY RAJU W/O.RAJU,
CHEERAN HOUSE, AMULYA STREET, ERNAKULAM,KOCHI-18
NOW RESIDING AT CHEERAN HOUSE, C/O.K.P.JACOB
PARAVATH LANE, BOAT JETTY ROAD, VADUTHALA PO,
KOCHI-23.

BY ADV. SRI.PULIKKOOL ABUBACKER
SRI.ZUBAIR PULIKKOOL

RESPONDENT:

SREE GOKULAM CHITS & FINANCE CO.(P) LTD.
NO.49, ARCOT ROAD, KODAMBAKKAM CHENNAI 600 024,
REP.BY P/A HOLDER MEERA JANARDHANAN,
JANARDHANAN, LEGAL ASSISTANT, SREE GOKULAM CHIT &
FINANCE CO.(P)LTD., SHERINE BUILDINGS,
JOS JUNCTION, M.G.ROAD, ERNAKULAM, KOCHI-16.

BY ADV. SRI.K.S.BABU
SMT.N.SUDHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

Petitioners' Exts:

Ext.P1 true copy of the Execution petition as EP No.82/05 in Arb. Code No.993/2003 on the file of the Munsiff Court, Ernakulam filed by the respondent.

Ext.P2 true copy of the objection dated 3.6.05 filed by the petitioner in EP No.82/2005

Ext.P3 true copy of the objection dated 6.6.2007 filed by the petitioner in EP 82/2005

Ext.P4 true copy of the order dated 14.6.2007 in EP No.82/05 in Arb Code No.993/03 on the file of the Principal Munsiff, Ernakulam.

M.N.Krishnan, J.

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W.P(C).No.23904 of 2007

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Dated this the 9th day of October, 2007.

JUDGMENT

This Writ Petition is preferred against the order of the Munsiff, Ernakulam in E.P.No.82 of 2005 in Arb. Code 993 of 2003. A perusal of the facts would reveal that the judgment debtors offered to pay the amount in instalment, which was allowed by the court and after payment of one instalment, they stopped the same and therefore the decree holder was forced to file application for restoring the E.P. and thereafter on account of non-payment, the court ordered arrest of the judgment debtors and it is against that the present Writ Petition is filed.

2. Learned counsel for the writ petitioners submitted that due to unforeseen circumstances and on account of amputation of a finger in the toe the first petitioner is not able to do the work properly and that he is not having sufficient means to pay and therefore they cannot be arrested. Now it has been held by this

Court in very many decisions that offer to make payment in instalments itself will not amount to proof of means.

3. Therefore, I set aside the order under challenge and remit back the matter to the concerned Munsiff court for consideration of means of the judgment debtors after affording equal opportunities to both sides to adduce evidence in respect of their respective contentions. Thereafter, the court may pass orders in accordance with law. Parties are directed to appear before the court below on 13.11.2007.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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